

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOILERMAKERS NATIONAL
ANNUITY TRUST FUND, on behalf of
itself and all others similarly situated, et al.,

Plaintiffs,

v.

WAMU MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2006-AR1, *et*
al.,

Defendants.

Case No. C09-0037MJP

**DECLARATION OF FLOYD
ABRAMS IN SUPPORT OF THE
RATING AGENCY DEFENDANTS'
MOTION TO DISMISS THE
SECOND AMENDED
CONSOLIDATED CLASS ACTION
COMPLAINT**

I, Floyd Abrams, declare under penalties of perjury pursuant to 28 U.S.C. § 1746
as follows:

1. I am a member of the New York bar and of the firm of Cahill Gordon & Reindel
LLP. My firm, together with Paul J. Kundtz and Gavin W. Skok of Riddell Williams P.S.,
serve as attorneys for Defendant The McGraw-Hill Companies, Inc. ("McGraw-Hill" or
"S&P") in this matter. By order of this Court dated December 28, 2009, I have been
granted leave to appear *pro hac vice* on behalf of McGraw-Hill. I make this declaration to
place before the Court certain documents obtained from public sources. The Court may
take judicial notice of these documents because their publication is a matter of public

1 record and cannot be reasonably questioned. I am fully familiar with the facts set forth
2 herein and make this declaration based on my personal knowledge.

3 2. On April 1, 2010 Plaintiffs in this matter filed their Second Amended
4 Consolidated Class Action Complaint. A true and accurate copy of the Second Amended
5 Consolidated Class Action Complaint is attached hereto as Exhibit A.

6 3. On April 22, 2010, Judge Susan Illston of the Northern District of California
7 issued an opinion in *In re Wells Fargo Mortgage-Backed Certificates Litigation*, No. 09-
8 cv-1376, Dkt. No. 198. A true and accurate copy of the opinion is attached hereto as
9 Exhibit B.

10 4. On February 5, 2010, Judge Lewis A. Kaplan of the Southern District of New
11 York issued an order in *In re IndyMac Mortgage-Backed Securities Litigation*, No. 09-cv-
12 04583-LAK, Dkt. No. 195. A true and accurate copy of the opinion is attached hereto as
13 Exhibit C.

14 5. On Mar. 31, 2010, Judge Jed. S. Rakoff of the Southern District of New York
15 issued an opinion in *Iron Workers Local No. 25 Pension Fund v. Credit-Based Asset*
16 *Servicing & Securitization LLC*, No. 08-cv-10841, Dkt. No. 101. A true and accurate
17 copy of the opinion is attached hereto as Exhibit D.

18 6. On Feb. 5, 2010, Judge Lewis A. Kaplan of the Southern District of New York
19 issued an order in *Tsereteli v. Residential Asset Securitization Trust 2006-A8, et al.*, No.
20 08-cv-10637-LAK, Dkt. No. 52. A true and accurate copy of the opinion is attached
21 hereto as Exhibit E.

22 7. On December 18, 2006, WaMu Mortgage Pass-Through Certificates, Series
23 2006-AR18 Trust filed with the Securities and Exchange Commission ("SEC") a
24 prospectus supplement, which stated, *inter alia*:
25
26

1 A security rating is not a recommendation to buy, sell or hold securities and
2 may be subject to revision or withdrawal at any time by the assigning
3 rating agency The ratings on the offered certificates address the
likelihood of the receipt by holders of the offered certificates of all
distributions on the underlying mortgage loans to which they are entitled.

4 WaMu Mortgage-Pass Through Certificates, Series 2006-AR18 Prospectus Supplement, at
5 S-81 (December, 18, 2006). A true and accurate copy of the relevant excerpts of the
6 document is attached hereto as Exhibit F.

7 8. On December 18, 2006, WaMu Mortgage Pass-Through Certificates, Series
8 2006-AR18 Trust filed with the SEC a prospectus supplement, which stated, *inter alia*:

9 The issuer of the certificates, the WaMu Mortgage Pass-Through
10 Certificates Series 2006-AR18 Trust (the "Trust"), will be a statutory trust
11 formed under the laws of the State of Delaware pursuant to a trust
12 agreement between WaMu Asset Acceptance Corp., as depositor, and
13 Christiana Bank & Trust Company, as Delaware trustee. The pooling and
14 servicing agreement, dated as of December 1, 2006 (the "pooling
agreement"), among the depositor, Washington Mutual Bank, as servicer,
the Delaware trustee and LaSalle Bank National Association, as trustee,
will restate the trust agreement and will be the governing instrument of the
Trust.

15 . . .

16 The permissible activities of the Trust may not be modified except by an
amendment to the pooling agreement.

17 WaMu Mortgage Pass-Through Certificates, Series 2006-AR18 Prospectus Supplement, at
18 S-25, S-26 (December 18, 2006). A true and accurate copy of the relevant excerpts of the
19 document is attached hereto as Exhibit F.

20 9. Language identical or substantially similar to that cited above in paragraphs 7-8
21 is also contained in the prospectus supplements for the other offerings from which
22 Plaintiffs allege they purchased. *See, e.g.*, WaMu Mortgage Pass-Through Certificates,
23 Series 2007-HY1 Prospectus Supplement at S-28, S-29, S-99 (dated January 22, 2007) (a
24 true and accurate copy of the relevant excerpts is attached hereto as Exhibit G); WaMu
25 Mortgage Pass-Through Certificates, Series 2007-OA4 Prospectus Supplement at S-41, S-
26

1 42, S-117 (dated April 24, 2007) (a true and accurate copy of the relevant excerpts is
2 attached hereto as Exhibit H); WaMu Mortgage Pass-Through Certificates, Series 2007-
3 OA5 Prospectus Supplement at S-42, S-43, S-119 (dated May 22, 2007) (a true and
4 accurate copy of the relevant excerpts is attached hereto as Exhibit I); WaMu Mortgage
5 Pass-Through Certificates, WMALT Series 2007-OA5 Prospectus Supplement at S-37, S-
6 38, S-108 (dated June 25, 2007) (a true and accurate copy of the relevant excerpts is
7 attached hereto as Exhibit J); WaMu Mortgage Pass-Through Certificates, Series 2006-
8 AR5 Prospectus Supplement at S-34, S-35, S-97 (dated May 23, 2006) (a true and accurate
9 copy of the relevant excerpts is attached hereto as Exhibit K); WaMu Mortgage Pass-
10 Through Certificates, Series 2006-AR7 Prospectus Supplement at S-41, S-42, S-122 (dated
11 June 23, 2006) (a true and accurate copy of the relevant excerpts is attached hereto as
12 Exhibit L).

13 10. Language identical or substantially similar to that cited in paragraphs 7-8 is
14 also contained in the prospectus supplements for the offerings in which Plaintiffs are not
15 alleged to have purchased securities. *See, e.g.*, WaMu Mortgage Pass-Through
16 Certificates, Series 2006-AR1 Prospectus Supplement (dated January 26, 2006); WaMu
17 Mortgage Pass-Through Certificates, Series 2006-AR6 Prospectus Supplement (dated June
18 22, 2006); WaMu Mortgage Pass-Through Certificates, Series 2006-AR13 Prospectus
19 Supplement (dated September 25, 2006); WaMu Mortgage Pass-Through Certificates,
20 Series 2007-HY3 Prospectus Supplement (dated February 23, 2007); WaMu Mortgage
21 Pass-Through Certificates, Series 2007-HY5 Prospectus Supplement (dated April 23,
22 2007); WaMu Mortgage Pass-Through Certificates, WMALT Series 2007-OC1 Prospectus
23 Supplement (dated May 10, 2007); WaMu Mortgage Pass-Through Certificates, Series
24 2007-OA6 Prospectus Supplement (dated June 22, 2007). These prospectus supplements
25 are publicly available on the SEC's website (www.sec.gov).

1 11. On March 29, 2010, Judge Paul A. Crotty of the Southern District of New
2 York issued an order in *New Jersey Carpenters Health Fund v. DLJ Mortgage Capital,*
3 *Inc.*, No. 08 Civ. 5653 (PAC), Dkt. No. 84. A true and accurate copy of the opinion is
4 attached hereto as Exhibit M.

5 I declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing
6 is true and correct.

7 Executed this 27th day of April, 2010 at New York, NY.

8
9
10 /s/ Floyd Abrams
 Floyd Abrams